

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

LINDA A. WATTERS, COMMISSIONER,
OFFICE OF FINANCIAL AND INSURANCE
SERVICES FOR THE STATE OF MICHIGAN,

Petitioner,

Case No. 03-1127-CR

vs.

Hon. William E. Collette

THE WELLNESS PLAN, a Michigan Health
Maintenance Organization,

Respondent.

_____/

Mark J. Zausmer (P31721)
Amy M. Sitner (P46900)
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Attorneys for Petitioner, Rehabilitator of
The Wellness Plan
31700 Middlebelt Road, Suite 150
Farmington Hills, MI 48334
(248) 851-4111

_____/

**BRIEF IN SUPPORT OF CLAIMANT/CREDITOR HOME RESPIRATORY CARE &
HOSPITAL EQUIPMENT, INC.'S PLAN FOR PAYMENT PRIORITY OF
FUNDS TO BE DISTRIBUTED TO CREDITORS**

I. INTRODUCTION

The Honorable William E. Collette, in his Order dated February 28, 2005 relating to the above matter, has ordered that Briefs, on the payment priority issue, be filed on or before April 20, 2005. This claimant, Home Respiratory Care & Hospital Equipment, Inc.

("HRC"), appreciates the opportunity provided by the Court to express its views on the issue of priority of payment to Durable Medical Equipment ("DME") creditors.

II. FACTS

HRC is a small business DME supplier located at 17700 W. McNichols, Detroit, Michigan, 48235. It conducts its business principally within the areas served by The Wellness Plan. HRC has supplied DME products and supplies to The Wellness Plan ("TWP") patients for upwards of ten years. HRC has been consistently required to maintain a large volume inventory of products and supplies to meet TWP patient requirements. It must purchase equipment and pay its vendors based upon an historic acquisition pattern that reflects the approximate need, *in futuro*, of TWP DME patients.

HRC estimates that upwards of 85% of its business has been with TWP and largely for TWP's Medicaid patients.

HRC claims totaling upwards of \$353,345.83 have been approved as proper claims by the Rehabilitator.

HRC, as a small business, has been required to secure bank loans and incur substantial indebtedness in maintaining the required inventory to serve TWP Medicaid patients. Products and supplies were required to be available on a prompt basis and required HRC to purchase them outright as a part of permanent inventory.

As indicated, all things being equal, past historic Wellness user determined what inventory to maintain to satisfy TWP member requirements.

The attached letter of the Honorable Linda A. Watters, Insurance Commissioner ("IC"), dated July 8, 2003, required providers to continue to provide services to 117,000

TWP members. Consistent with that letter, HRC continued to provide equipment and supplies as ordered by TWP to TWP members. As a consequence of this IC directive, HRC was required to continue to purchase a large volume of products to service TWP members.

HRC historic inventory amounts approximated \$600,000 annually.

Although claims at issue were incurred during the period of rehabilitation, HRC did continue to furnish equipment and supplies to TWP members after the rehabilitation ended, with equipment being reimbursed to only 80% of the Medicaid screen. This arrangement continued until the sale of TWP to Molina.

Upon information and belief, TWP has budgeted and allocated monies for DME products and equipment.

III. LAW AND DME PRIORITY PROPOSAL

MCL 500.8101 sets forth, among other matters, the purposes of Chapter 81 as defining and administering rehabilitation. The IC is given broad powers to act. At the same time, it is clearly stated in MCL 500.8101(3) that an important part of the rehabilitation law is "the protection of the interests of insureds, claimants, creditors, and the public . . ." Subsections (c), early detection of problems, and (d), equitable apportionment of losses, are emphasized and encouraged. Accordingly, a proper priority plan that is flexible and equitable is contemplated.

In fact, MCL 500.8103(j) recognizes a "preferred claim" and basically leaves its definition to the facts and circumstances of the particular situation. HRC believes DME claimants/creditors should have a "preferred claim" in that a separate classification/

category that takes into consideration the provision of products over services be established, particularly for small business providers.

DME would be entitled to a fair amount to be carved out for DME claimants/creditors since so much of their business is product and vendor activated. The carved-out fund, at a minimum, should reimburse DME claimants/creditors their product costs and monthly rentals.

This priority formula recognizes the independent, small business DME claimant/creditor. Many like HRC are small businesses and non-institutional enterprises. They ought to be bundled into their own category. These are claimant/creditor's thoughts. Some variant of this principle to separate DME claimants out might be equally fair.

Under MCL 500.8144, the Court directs how distributions will be paid.

In discussing rehabilitation plan approval, there is in MCL 500.8114(4) a standard for the Court. The plan shall be in the Court's judgment "... fair and equitable to all parties concerned ..."

In HRC's judgment, its DME proposal for DME claimants/creditors is a fair and reasonable one.

IV. CONCLUSION

WHEREFORE, based upon the facts and reasons set forth above, claimant/creditor requests that its DME carve-out proposal for allocation and distribution be adopted, together with such other and further relief as to the Court shall seem appropriate.

Respectfully submitted,

FOSTER, SWIFT, COLLINS & SMITH, P.C.

By: 

Gilbert M. Frimet (P13735)

By: 

Alan T. Rogalski (P44550)

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(248) 539-9900

Dated: April 19, 2005

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EXHIBIT

A



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE SERVICES
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
DAVID C. HOLLISTER, DIRECTOR

LINDA A. WATTERS
COMMISSIONER

July 8, 2003

Dear Wellness Plan Provider:

On July 1, 2003, I placed The Wellness Plan into rehabilitation in order to protect its members and providers. I believe it is important that The Wellness Plan providers continue to provide health care services to the health plan's 117,000 members. I would also like to provide you with the following facts:


- All Wellness Plan providers will receive their contracted rate for Wellness Plan member claims for those claims with dates of service on and after July 1, 2003. Wellness Plan provider claims with dates of service incurred prior to July 1, 2003 will be addressed once a thorough assessment of The Wellness Plan's financial condition has been completed. A procedure for filing your claim is being developed.
- As part of the overall rehabilitation plan for The Wellness Plan, I appointed Eoshealth Regulatory Services LLC as deputy rehabilitator. Under the terms of Eoshealth's management contract, the majority of its compensation is based on the improvement of The Wellness Plan's financial condition. The Eoshealth staff has many years of managed care experience both in the private and regulatory sectors.

As my staff and I discussed the rehabilitation order, we decided to limit the ability of providers to terminate their contracts with The Wellness Plan. This was done to ensure medical services to The Wellness Plan's 117,000 members. I expect this limitation to be temporary and that it will not be needed once The Wellness Plan's financial condition improves. I will review the continued need for this provision of the Rehabilitation Order by December 31, 2003.

The Wellness Plan Deputy Rehabilitator will meet with individual and groups of health care providers, hospitals and physicians to answer questions and address concerns. If you have questions or would like to schedule a meeting, Eoshealth may be contacted by email at twpprovider@eoshealth.com; by facsimile at 480-377-3018; or by telephone at 866-897-3678.

We appreciate the care and services that you provide The Wellness Plan's members. We want to work with the providers of the health plan to quickly address any issues and restore financial health to this company. I have posted a copy of the Rehabilitation Order and related documents on the Office of Financial & Insurance Service's website at www.michigan.gov/ofis.

Sincerely,


Linda A. Watters
Commissioner

cc: Janet Olszewski, Department of Community Health
Dennis Paradis, Michigan Osteopathic Assoc
Kevin Kelly, Michigan State Medical Society
Peter Schonfeld, Michigan Health & Hospital Assoc

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of Brief in Support of Claimant/Creditor Home Respiratory Care & Hospital Equipment, Inc.'s Plan for Payment Priority of Funds to be Distributed to Creditors and this Certificate of Service were served upon the attorneys of record of all parties to the above cause by:

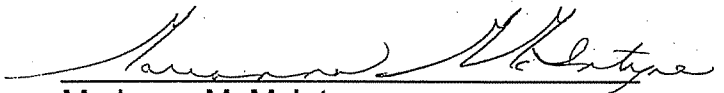
X U.S. Mail ☐ Hand Delivery X Facsimile

☐ Federal Express ☐ Certified Mail

at their respective business addresses as disclosed by the pleadings of record herein on
April 19, 2005, as follows:

Mark J. Zausmer, Esq.
Zausmer, Kaufman, August & Caldwell, P.C.
31700 Middlebelt Road, Suite 150
Farmington Hills, MI 48334
(248) 851-0100

I declare that the statement above is true to the best of my information, knowledge
and belief.



Marianna M. McIntyre

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